

Department of Legislative Services
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2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 33

(Senator West)

Budget and Taxation

Recordation and Transfer Taxes - Exemption for Related Business Entities -
Common Law Trusts

This bill alters an exemption from the recordation tax and State and county transfer tax for transfers between related business entities to include transfers involving common law trusts. **The bill takes effect July 1, 2026, and applies to instruments of writing recorded on or after July 1, 2026.**

Fiscal Summary

State Effect: State transfer tax revenues decrease beginning in FY 2027 depending on the number of property transfers under the bill that occur each year. The number of affected transfers that may occur each year cannot be reliably estimated. General fund revenues decrease as a result of commissions not being collected. State expenditures are not affected.

Local Effect: Local recordation and transfer tax revenues decrease beginning in FY 2027 depending on the number of property transfers under the bill that occur each year. The number of affected transfers that may occur each year cannot be reliably estimated. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: A trustee is currently prohibited from transferring real property via a deed from a trust to a limited liability company (LLC) that is wholly owned by that trust. In general, the transfer of real property to an LLC that is formed strictly to hold real property, which is commonly referred to as a “special purpose entity,” and is intended to limit liability to the ultimate owners is a common strategy used when structuring real estate

ownership. Under current law, common law trusts are not able to utilize this mechanism which limits a trustee's ability to protect trust assets in the same manner that non-trust entities are able to protect their assets through the use of special purpose entities. Under the bill, a common law trust will be able to transfer real property from the trust to subsidiary LLCs that are wholly owned by the trust. This provides common law trusts the same protections afforded similarly situated entities in Maryland. In general, the powers of a common law trust are not derived from statutory law but rather come from a trust agreement. A common law trust is formed by agreement between owners of a property or business and a trustee or group of trustees. The trustees hold legal title to all property of the business and manage its affairs.

Recordation Taxes

The recordation tax base is composed of the following: (1) instruments conveying title to real property – the actual consideration paid; (2) instruments that create or give notice of a security interest in real property – the principal amount of debt secured; and (3) instruments that create or give notice of a security interest in personal property – the principal amount of debt secured.

Recordation taxes are also imposed on the transfer of real property with a value of \$1.0 million or more when the transfer is achieved through the sale of a “controlling interest” in a specified corporation, partnership, limited liability company, limited liability partnership, or other form of unincorporated business. Controlling interest is defined as more than 80% of the total value of the stock or the interest in capital and profits. Recordation taxes are generally imposed on an “indemnity mortgage” in the same manner as if the guarantor were primarily liable for the guaranteed loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan or the indemnity mortgage secures a guarantee of repayment of a loan for less than \$3.0 million. An indemnity mortgage includes any mortgage, deed of trust, or other security interest in real property that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable. Legislation passed during the 2013 session specifies the manner in which indemnity mortgages are subject to recordation taxes.

Counties and Baltimore City are authorized to set their own recordation tax rates, which are expressed as an amount per \$500 of the consideration payable or principal amount of the debt secured. Although the counties have broad authority to set their recordation tax rates, some State-mandated rates exist. Articles of merger and articles of consolidation filed with the State Department of Assessments and Taxation, for example, are taxed at \$1.65 per \$500. For fiscal 2026, recordation tax rates range from \$2.50 per \$500 of transaction in Baltimore and Howard counties to \$7.00 per \$500 of transaction in Charles and Frederick counties. In Montgomery County, specified surcharges are imposed on transactions valued at more than \$500,000. A majority of counties have tax rates set between \$3.00 and \$5.00.

State and Local Transfer Taxes

The State, Baltimore City, and 18 counties currently impose a transfer tax. Local transfer tax rates range from 0.5% in 8 counties (Allegany, Caroline, Cecil, Charles, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. In Anne Arundel County, a 0.5% surcharge is imposed on specified transactions valued at \$1.0 million or more, resulting in a 1.5% tax rate. Montgomery County imposes various rates depending on the value of the property. Five counties (Calvert, Carroll, Frederick, Somerset, and Wicomico) do not impose a local transfer tax.

Of the charter and commission counties that impose a transfer tax, some incorporate the exemptions applicable to the State transfer tax, while exemptions in other counties are independently defined. In code counties, all the exemptions from the State transfer tax apply to the local transfer tax. Some State-mandated exemptions are applicable to all counties, including transfers between spouses and former spouses pursuant to a property settlement or divorce decree. All counties are authorized to exempt a portion of the consideration payable on owner-occupied residential property. Counties may also provide an exemption for first-time homebuyers. Certain rate limitations apply to the imposition of a local transfer tax on agricultural land, as set forth in the Annotated Code.

The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

Exemptions from the transfer tax are generally the same as the exemptions from recordation taxes and include conveyances to a government, including the United States, State, or a municipality in the State, or public agency; conveyances involving related corporations; and transfers between spouses, relatives, or specified domestic partners.

The clerks of the circuit court in several jurisdictions collect a number of different taxes and fees, including local recordation and transfer taxes. The Administrative Office of the Courts reports that the clerk of the circuit court collects local recordation and transfer taxes in the following nine counties: Allegany, Calvert, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, and Washington. In the remaining jurisdictions, county governments collect these taxes.

Additional information on local recordation and transfer taxes is provided in the [County Revenue Outlook Report](#) and the [Guide to Local Government Taxing Authority](#). A copy of both reports is available on the Department of Legislative Services [website](#).

State Fiscal Effect: State special fund revenues decrease beginning in fiscal 2027. The amount of the revenue decrease due to the transfer tax exemption depends on the number of property transfer exemptions resulting from the bill that occur each year and the amount of consideration associated with each transfer. The number of these transfers that may occur each year cannot be reliably estimated. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250.

The clerks of the circuit court who collect recordation and transfer taxes are entitled to a commission of between 3.0% and 5.0% of all public monies collected, which, unless otherwise specified, are remitted to the State's general fund. The exemption proposed by the bill will reduce the amount of transfer taxes collected by the clerks of the circuit court and thereby the amount of commission revenue remitted to the general fund. The amount of the general fund revenue decrease cannot be reliably estimated.

Local Fiscal Effect: Local recordation and transfer tax revenues decrease beginning in fiscal 2027 depending on the number of property transfer exemptions resulting from the bill that occur each year. The amount of the revenue decrease due to the exemption depends on the number of property transfers pursuant to the bill that occur and the amount of consideration associated with each transfer. The number of affected transfers that may occur in any year cannot be reliably estimated.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 82 (Delegate Cardin) - Judiciary.

Information Source(s): Maryland Association of Counties; Administrative Office of the Courts; State Department of Assessments and Taxation; Department of Legislative Services

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